

UNITED STATES PATENT AND TRADEMARK OFFICE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: October 15, 2004

Opposition No. **91152044**

MONSTER CABLE PRODUCTS, INC.

v.

JOEL BARRY SHAMITOFF

Andrew P. Baxley, Interlocutory Attorney:

On July 19, 2004, the Board issued an order suspending this proceeding following the withdrawal of applicant's counsel on April 16, 2004. Therein, the Board allowed applicant until thirty days therefrom in which to either appoint a new attorney or to state that applicant would represent himself. No appearance or other response is of record.

Accordingly, the Board presumes that applicant intends to represent himself herein.¹ While Patent and Trademark Rule 10.14 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law

¹ While the Board may issue an order allowing a party who has failed to respond to an order allowing him time to either appoint new counsel or file a paper with the Board stating that he intends to represent himself, the Board is not required to so issue and is often reluctant to so issue to defendants, who do not bear the burden of proof in Board *inter partes* proceedings.

Opposition No. 91152044

involved in Board *inter partes* proceedings to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

Applicant is also advised that Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service.

The Board recommends that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice and is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.² Strict compliance with the Trademark Rules of

² The Trademark Trial and Appeal Board Manual of Procedure (TBMP) (Stock No. 903-022-00000-1) is available for a fee

Opposition No. 91152044

Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

The Board notes that, in compliance with the Board's February 23, 2004 order in which it denied opposer's motion for summary judgment and allowed opposer until thirty days therefrom in which to file an amended notice of opposition which set forth an acceptable claim of dilution, opposer filed an amended notice of opposition on March 15, 2004. The Board, on its own initiative, hereby modifies its April 20, 2004 order to the extent that the amended notice of opposition is accepted and is opposer's operative pleading herein.

Proceedings are hereby resumed. Applicant is allowed until **thirty days** from the mailing date of this order to file an answer to the amended notice of opposition.³ Discovery and trial dates are reset as follows.

DISCOVERY PERIOD TO CLOSE: **12/17/04**

from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (Telephone (202) 512-1800). The TBMP is also available on the World Wide Web at <http://www.uspto.gov>.

³ The amended notice of opposition filed by opposer herein consists of thirty-one paragraphs setting forth the basis of opposer's claims of damage. In accordance with Fed. R. Civ. P. 8(b), applicant should answer the amended notice of opposition by simply admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

Opposition No. 91152044

Plaintiff's thirty-day testimony period to close: **3/17/05**

Defendant's thirty-day testimony period to close: **5/16/05**

Plaintiff's fifteen-day rebuttal period to close: **6/30/05**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.